



National Labor Relations Board

Weekly Summary of NLRB Cases

Office of Public Affairs

Washington, D.C. 20570

Tel. (202) 273-1991

October 9, 2009

W-3229

CASES SUMMARIZED
VISIT WWW.NLRB.GOV FOR FULL TEXT

Action Carting Environmental Services, Inc.	Newark, NJ	3
Knight Protective Service, Inc.	Kalamazoo, MI	3
Mammoth Coal Co.	Leivasy, WV	4
Operating engineers Local 150 (Moore Landscapes, Inc.)	Chicago, IL	4
Parksite Group (The)	South Windsor, CT	5
Raymond Interior Systems	Orange and San Diego, CA	5

OTHER CONTENTS

Decisions of Administrative Law Judges	6
Test of Certification Cases	7

<u>Unpublished Board Decisions and Orders in Representation Cases</u>	7
<ul style="list-style-type: none"> • Uncontested Report of Hearing Officer • Miscellaneous Board Decision and Order 	

The Weekly Summary of NLRB Cases is prepared by the NLRB Office of Public Affairs and is available on a paid subscription basis. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board. The case summaries constitute no part of the opinions of the Board. The Office of Public Affairs has prepared them for the convenience of subscribers.

If you desire the full text of decisions summarized in the Weekly Summary, you can access them on the NLRB's Web site (www.nlr.gov). Persons who do not have an Internet connection can request a limited number of copies of decisions by writing the Office of Public Affairs, 1099 14th Street, NW, Suite 9400, Washington, DC 20570 or fax your request to 202/273-1789. As of August 1, 2003, Administrative Law Judge decisions are on the Web site.

All inquiries regarding subscriptions to this publication should be directed to the Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20402, 202/512-1800. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

Action Carting Environmental Services, Inc. (22-CA-28197, et al., 22-CB-10530, and 22-RC-12875, 354 NLRB No. 84) Newark, NJ, Sept. 30, 2009. In this consolidated unfair labor practice and election objections proceeding, the Board adopted, in the absence of exceptions, the administrative law judge's conclusions that the Respondent: (1) violated Section 8(a)(1) of the Act by interrogating employees about their union sympathies, by promising employees benefits if they supported Local 621 and threatening employees with reprisals if they supported Local 813, and by creating an impression among its employees that their union activities were under surveillance, and (2) violated Section 8(a)(3) by discriminatorily discharging employees Zengewald and Meadows, but did not violate Section 8(a)(3) when it discharged Dominic Madden. Further, in the absence of exceptions, the Board adopted the judge's conclusion that Local 621 did not breach its duty of fair representation, and his recommendation to overrule certain of Local 813's election objections. [\[HTML\]](#) [\[PDF\]](#)

The Board adopted, for the reasons stated by the judge, his conclusions that the Respondent violated Section 8(a)(3) by discharging employee Gadson, and by transferring/ changing the working conditions of employee Frank Madden, but not by discharging him. As to the latter, the Board adopted the judge's conclusion that Madden quit because of a personal confrontation, not because of the Respondent's change to his working conditions. The Board thus disavowed the judge's analysis to the extent that he found element one met under *Crystal Princeton Refining Co.*, 222 NLRB 1068 (1976) (each Board member added a personal footnote on this issue). The Board amended the remedy and modified the judge's recommended Order to provide a make-whole remedy for the additional commuting expenses incurred by Madden as a result of the unlawful transfer.

In the representation case, absent adequate explanation for the timing of adjustments to the Employer's safety bonus program that resulted in large bonus payments to employees immediately prior to the election, the Board adopted the judge's recommendation to find the payments objectionable. The Board set aside the election on this basis, and therefore found it unnecessary to pass on whether the unlawful discharge of Gadson and the unlawful transfer of Madden would constitute a basis for setting aside the election.

(Chairman Liebman and Member Schaumber participated.)

Charges filed by Teamsters Local 813; complaint alleged violations of Section 8(a)(1) and (3). Hearing at Newark, Aug. 26-28, and Sept. 3-4, and 9, 2008. Adm. Law Judge Steven Davis issued his decision May 8, 2009.

Knight Protective Service, Inc. (7-CA-51139, 51388; 354 NLRB No. 86) Kalamazoo, MI, Sept. 30, 2009. The Board adopted the administrative law judge's decision dismissing the complaint allegation that the Respondent, Knight Protective Service, Inc., unilaterally eliminated paid lunch breaks for bargaining unit members without affording the Union a reasonable opportunity to bargain, in violation of Section 8(a)(5) and (1) of the Act. In adopting the judge's

finding that the Respondent provided the Union with a “meaningful” opportunity to bargain, Chairman Liebman found it unnecessary to rely on the judge’s finding that, had the Union proposed a creative alternative to the elimination of the paid breaks, the Respondent would have considered it with an open mind. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Liebman and Member Schaumber participated.)

Charges filed by Government Security Officers Local 206; complaint alleged violation of Section 8(a)(1) and (5). Hearing held at Kalamazoo, March 18, 2009. Adm. Law Judge Paul Buxbaum issued his decision June 29, 2009.

Massey Energy Co. and its subsidiary, Spartan Mining Co. d/b/a Mammoth Coal Co. (9-CA-42057; 354 NLRB No. 83) Leivasy, WV, Sept. 30, 2009. The Board adopted the administrative law judge’s findings that Respondent Mammoth Coal Co. violated Section 8(a)(3) and (1) of the Act by discriminating against the hire of the union employees of its predecessor in order to avoid a union majority and concomitant bargaining obligations. In doing so, the Board rejected Mammoth’s contention that the application of the evidentiary burdens set forth in the Board’s recent decision in *Toering Electric*, 351 NLRB 225, 233 (2007)(determining whether discriminatees qualified as genuine applicants) – which the judge declined to apply – would dictate a different result. The Board also adopted the finding that Mammoth violated Section 8(a)(5) and (1) by failing and refusing to recognize the Union as the bargaining representative of the bargaining unit employees and by unilaterally changing the bargaining unit’s terms and conditions of employment. In order to expedite the issuance of its decision, the Board decided to sever the allegation regarding the liability of Massey Energy, Mammoth’s parent company, and to reserve that issue for separate resolution. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Liebman and Member Schaumber participated.)

Charge filed by Mine Workers; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Montgomery for 16 days commencing Jan. 22 and concluding March 15, 2007. Adm. Law Judge Paul Bogas issued his decision Nov. 21, 2007.

Operating Engineers Local 150 (Moore Landscapes, Inc.) (13-CD-800, 801; 354 NLRB No. 89) Chicago, IL, Sept. 30, 2009. The Board awarded the disputed work in this 10(k) proceeding to employees represented by International Brotherhood of Teamsters, Local 703, and International Union of Operating Engineers, Local 150, rather than to employees represented by United Union of Roofers, Waterproofers and Allied Workers, Local No. 11. In making this award, the Board found that there was a reasonable cause to believe Section 8(b)(4)(D) of the Act had been

violated, and relied on the 10(k) factors of Board certification and collective-bargaining agreements, employer preference and past practice, area and industry practice, economy and efficiency of operations, and gain or loss of employment. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Liebman and Member Schaumber participated.)

Parksite Group (The) (34-CA-11961; 354 NLRB No. 90) South Windsor, CT, Sept. 30, 2009. The Board, adopting the administrative law judge's findings, agreed that an employer successor violated Section 8(a)(3) of the Act by refusing to hire 10 members of the predecessor's bargaining unit. The Board found sufficient evidence in the record to establish that Parksite acted with the object of avoiding a bargaining obligation, and that the successor would not have made the same hiring decisions absent the discriminatees' union affiliation. Applying precedent, the Board also found that the appropriate remedy for the refusal to hire was reinstatement and backpay, not the lesser remedy (eligibility for future hiring) for a refusal to consider discriminatees for employment. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Liebman and Member Schaumber participated.)

Charge filed by Teamsters Local 671; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Hartford, Aug. 19-22, and Sept. 15, 2008. Adm. Law Judge Raymond P. Green issued his decision Nov. 26, 2008.

Raymond Interior Systems (21-CA-37649, 21-CB-14259; 354 NLRB No. 85) Orange and San Diego, CA, Sept. 30, 2009. The Board adopted the administrative law judge's decision that the Respondent Raymond Interior Systems violated Section 8(a)(2) and (3) of the Act by unlawfully assisting the Respondent Carpenters Union in obtaining authorization cards by warning its drywall finishing employees that there would be no work for them if they failed to sign with the Carpenters "that day." The Board adopted the judge's finding that these statements by Raymond coerced the drywall finishing employees into signing authorization cards, based on which Raymond granted recognition under Section 9(a) to the Carpenters as the collective-bargaining representative of those employees. The Board accordingly adopted the judge's finding that Raymond violated Section 8(a)(2) by, on Oct. 2, 2006, recognizing the Carpenters as the Section 9(a) collective-bargaining representative of its drywall finishing employees at a time when the Carpenters did not represent an uncoerced majority of those employees; and that the Carpenters violated Section 8(b)(1)(A) by accepting that recognition. In light of those findings, the Board found it unnecessary to pass on the judge's additional findings that Raymond unlawfully recognized the Carpenters on Oct. 1, 2006, and the Carpenters unlawfully accepted recognition on that day. The Board observed that those findings are cumulative of the findings of unlawful conduct occurring on Oct. 2, 2006, and would not materially affect the remedy in the proceeding. [\[HTML\]](#) [\[PDF\]](#)

The Board also adopted the judge's findings: (1) that Raymond and the Carpenters violated Section 8(a)(3) and 8(b)(2), respectively, by maintaining and applying the Carpenters Union 2006-2010 Master Agreement, including its union-security provision, to the drywall finishing employees, at a time when the Carpenters did not represent an uncoerced majority of those employees; and (2) that the Carpenters violated Section 8(b)(1)(A) by failing to inform the drywall finishing employees, prior to seeking to obligate them to pay dues and fees under the above union-security provision, of their rights under *General Motors*, 373 U.S. 734 (1963) and *Communications Workers v. Beck*, 487 U.S. 735 (1988).

(Chairman Liebman and Member Schaumber participated.)

Charges filed by Painters Southern California District Council No. 36; complaint alleged violations of Sections 8(a)(2), (3), and 8(b)(1)(A) and (2). Hearing at Los Angeles, April 28-30 and May 1, 2008. Adm. Law Judge Burton Litvack issued his decision Nov. 10, 2008.

DECISIONS OF ADMINISTRATIVE LAW JUDGES

ABC Industrial Laundry, LLC d/b/a Universal Laundries & Linen Supply (Individuals)
Las Vegas, NV, Sept. 28, 2009, 28-CA-22133, et al., JD(SF)-33-09, Judge Burton Litvack

Camaco Lorain Manufacturing Plant (UAW Region 2-B) Lorain, OH, Sept. 28, 2009,
8-CA-36785, JD(ATL)-24-09, Judge Keltner W. Locke

CSS Healthcare Services, Inc. (an Individual) Jonesboro, GA, Sept. 29, 2009, 10-CA-37628,
JD(ATL)-26-09, Judge Michael A. Marcionese

ARC Bridges, Inc. (American Federation of Professionals) Newark, NJ, Sept. 30, 2009,
13-CA-45065, 45066, JD-47-09, Judge Michael A. Rosas

Austal USA, LLC (Sheet Metal Workers Local 441) Mobile, AL, Sept. 30, 2009,
15-CA-18547, et al., 15-RC-8394, JD(ATL)-27-09, Judge John H. West

HTH Corp., Pacific Beach Corp. and KOA Management, LLC, a Single Employer,
d/b/a Pacific Beach Hotel (Longshore and Warehouse Local 142) Honolulu, HI, Sept. 30, 2009,
37-CA-7311, et al., JD(SF)-39-09, Judge James M. Kennedy

TEST OF CERTIFICATION CASES

(In the following cases, the Board granted the General Counsel's motion for summary judgment on the grounds that the Respondent has not raised any representation issue that is litigable in this unfair labor practice proceeding.)

Compucom Systems, Inc. (Communications Workers Local 1032) 22-CA-28969, 354 NLRB No. 87, Sept. 30, 2009 [\[HTML\]](#) [\[PDF\]](#)

Fred Meyer Stores, Inc. (Food & Commercial Workers Local 1439) 19-CA-31994, 354 NLRB No. 88, Sept. 30, 2009 [\[HTML\]](#) [\[PDF\]](#)

UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following case, the Board adopted Report of Hearing Officer in the absence of exceptions)

**DIRECTION [that Regional Director
open and count ballots]**

Rathgibson, Inc., Janesville, WI, 30-RC-6747, Sept. 29, 2009 (Chairman Liebman and Member Schaumber)

(Miscellaneous Board Decision and Order)

**ORDER [affirming Regional Director's
administrative dismissal of petition]**

Delaware North, Newark, NJ, 22-RC-13034, 22-RC-13037, Oct. 1, 2009 (Chairman Liebman and Member Schaumber)
